IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5968 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SANDEEP NARAYAN BENDRRA, DR JOSHIVADA DATTAMALI

Versus

COMMISSIONER OF POLICE, SURAT CITY, SURAT

Appearance:

MR BC DAVE for Petitioner

MR UR BHATT AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 24/08/2000

ORAL JUDGEMENT

The petitioner has filed this writ petition under Article 226 of the Constitution of India challenging order of detention dated 18.3.2000 passed by respondent no.1 with respect to the petitioner detenu.

2. The detaining authority passed an order of

detention under Sec.3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short "the Act") branding the detenu as "dangerous person" within the meaning of Sec.2(c) of the Act. Looking to the papers relating to grounds of detention, one criminal case has been lodged against the detenu in DCB Police Station of Surat. That criminal case has been lodged against the detenu which is registered as CR.No.I 35/1999 for offences punishable under Secs.364-A, 365, 368, 387, 383, 465 and 302, 34, 465 of I.P. Code and also under Sec.25-A of the Arms Act. It was registered on 25th June, 1999. The detenu was arrested in that case on 30th January, 2000. Bail application was presented to the Sessions Court, Surat on 28/2/2000. The learned Sessions Judge, Surat passed an order of bail on 9th March, 2000. As per the papers of grounds, on or after 10/3/2000, the detenu was not in jail custody but he was on bail. Thereafter on 18th March, 2000, the detaining authority passed an order of detention which is challenged in this writ petition. Looking to the definition of "dangerous person", as defined under Sec.2(c) of the Act, a person required to be detained should be such person that he should be a member or leader of a gang and habitually commits or attempts to commit offences punishable under Chapter 16 & 17 of I.P. Code. The word "habitually" has been used with some purpose. Here in this case, there is no pre-history of detenu that he was involved in such type of cases in past. Detaining authority has relied on only one case and branded the detenu as "a dangerous person".

3. Shri D.C.Dave, learned advocate for the petitioner has argued that the detaining authority was well aware about the facts of criminal case lodged against the detenu in the month of June, 1999 and the detaining authority, by basing the said case lodged in June, 1999, passed an order of detention in the month of March, 2000, and therefore, there is a delay of about nine months in between the date on which the case was registered and date of passing the order of detention. Mr. Dave has placed a reliance on case of ELESH NANDUBHAI PATEL VS. C.P.SINGH, COMMISSIONER OF POLICE, AHMEDABAD CITY AND OTHERS, reported in (1997) 2, 38(2) GLR 1375. In this case, this Court, by referring a case of PRADEEP NILKANTH Vs. S.RAMAMURTHY, reported in (1993) 2 SUPPLEMENTARY SCC 61, wherein it has been held that long gap of five months between incident alleged and order of detention was not explained by the detaining authority. This unexplained delay makes a ground of detention not proximate vitiating the order of detention itself. And looking to this such long gap of five

months, this Court held that the continued detention was not desirable and ultimately, an order of detention was quashed. Here in this case, only one case on which the detaining authority placed reliance was lodged in month of June, 1999, and by placing reliance on facts and circumstacnes of that case, he passed the order of detention in the month of March, 2000. This type of delay of nine month is unexplained, and therefore, the order which is challenged in this writ petition is bad in law and the same is required to be quashed and set aside.

4. In view of what is stated hereinabove, the order of detention dated 18th March, 2000, passed by respondent No.1 with respect to detenu is quashed and set aside. The detenu is orderd to be set at liberty forthwith, if he is not required to be further detained for any other criminal case. Rule is made absolute accordingly. Direct Service is permitted.

24/8/2000 (H.H. Mehta, J.)
ccshah